

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

BROADCAST MUSIC INC,
a corporation, et al.

Plaintiffs,

v.

FOURTH QUARTER INC d/b/a
SKY BAR CAFÉ, PATRICK J. GRIDER
AND DANIEL GRIDER EACH
INDIVIDUALLY

Defendants.

Case No. 3:07CV921-MRT

**MOTION AND OBJECTION TO STRIKE PLAINTIFFS' APPLICATION FOR
ENTRY OF DEFAULT**

COME NOW the Defendants, by and through their undersigned attorney of record, and object to and/or move this Honorable Court to strike Plaintiff's Application for entry of default, and as grounds therefore, state as follows:

1. On 12th day of October, 2007, Plaintiffs filed their complaint in the United States District Court for the Middle District of Alabama against Defendants.
2. Shortly after Defendants were served, the undersigned attorney contacted attorneys for Plaintiffs.
3. Defendants and Plaintiffs entered into settlement negotiations.
4. It was the clear understanding of the undersigned attorney, that no default or application for default would be taken in this action while the parties negotiated a settlement, and/or pending Defendants obtaining new or additional counsel to represent

Defendants in this copyright infringement action, as the undersigned and his firm do not regularly practice copyright law.

5. The undersigned attorneys' understanding concerning the Plaintiffs not taking and/or applying for a default was taken from a phone conversation between the undersigned and one of the Plaintiff's attorney's namely; Gilbert E. Johnston.

6. That Defendants, by and through their attorney have contacted a copyright attorney, however; Defendants only recently learned that the attorney contacted was not licensed in the State of Alabama. Arrangements are being made for another copyright attorney to be interviewed for possible association, et cet. in this case.

7. The Defendants and the Plaintiffs, pending settlement negotiations and Defendants arranging for additional and/or substitute counsel, agreed to continue the Rule 26(f) report.

8. The Rule 26(f) report is now due December 17, 2007.

9. The Defendant's believe and hope the negotiations will continue, and if necessary continue until the date of the Rule 26 (f) report of December 17, 2007.

10. That Courts generally disfavor defaults due to the strong public policy of determining cases on their merits.

11. That Defendants have meritorious defenses to this action; that granting this motion will not prejudice Plaintiffs, and, as set forth herein, Defendants have excusable neglect for failure to respond to the Complaint.

12. That Defendants are filing an answer on today's date.

WHEREFORE, Defendants pray that this Honorable Court will strike and/or deny Plaintiffs' application for entry of default in the above said Plaintiffs' motion.

Respectfully submitted this the 10th day of December, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

/s/ Davis B. Whittelsey
BY: DAVIS B. WHITTELSEY (WHI-067)
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following individuals, by hand delivering a copy or by placing it in the United State mail, postage prepaid, at their correct addresses this the 10th day of December, 2007.

Gilbert E. Johnston
Johnston, Barton, Proctor, & Rose LLP
569 Brookwood Village Suite 901
Birmingham, Alabama 35209
Tel.: (205) 458-9400
Fax: (205) 9500

/s/ Davis B. Whittelsey
DAVIS B. WHITTELSEY